

Message Text

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ACTION STR-07

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TO SECSTATE WASHDC PRIORITY 8175

INFO ALL EC CAPITALS

AMEMBASSY HELSINKI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

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USMTN USEEC

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A

TAGS: MTN, ETRD, EEC

SUBJECT: MTN: INFORMAL PLURILATERAL MEETING ON

- SUBSIDY/COUNTERVAILING DUTIES, APRIL 6-7, 1978

1. SUMMARY: US, EC, NORDIC, CANADIAN, AND JAPANESE
DELS HELD INFORMAL PLURILATERAL MEETING ON SUBSIDY/
CVD FOCUSING ON PAPERS DRAFTED BY US ON SUBSIDIES
AND BY THE EC ON PROCEDURES FOR CERTIFICATION,
CONSULTATION AND CONFLICT RESOLUTION. BULK OF
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SESSION WAS DEVOTED TO EXPLANATION OF PAPERS,
GENERAL OBSERVATIONS AND RESPONSES TO TECHNICAL
QUESTIONS. DISCUSSION PROCEEDED IN A BUSINESSLIKE
FASHION WITH DELEGATIONS RECOGNIZING THE NEED TO
GET DOWN TO WORK TO ACHIEVE AGREEMENT. PAPERS WILL
BE REVISED IN LIGHT OF COMMENTS RECEIVED FROM OTHER
DELS AND A FOLLOW-UP MEETING HAS BEEN SCHEDULED FOR

THE LAST WEEK IN APRIL. END SUMMARY.

2. ON APRIL 6 AND 7 THE US, EC, NORDICS, CANADIANS AND JAPANESE WERE JOINED BY THE GATT SECRETARIAT (LINDEN) IN AN INFORMAL PLURILATERAL DISCUSSION OF SUBSIDIES AND COUNTERVAILING MEASURES. US DEL (RIVERS ET AL) INITIATED DISCUSSION BY URGING COUNTRIES TO RELINQUISH POSTURING TACTICS AND BEGIN THE REAL WORK OF NEGOTIATING AN AGREEMENT. US PAPER ON SUBSIDIES WAS INTRODUCED AS A PRODUCT OF SEVERAL BILATERAL DISCUSSIONS WITH KEY DELEGATIONS BUT DID NOT REPRESENT CONSENSUS ON THE ISSUES. AFTER OUTLINING THE BASIC ELEMENTS OF THE DRAFT, THE FLOOR WAS OPENED TO OBSERVATIONS AND QUESTIONS.

3. CANADA AMB GREY AND EC REP KLEIN TOOK LEAD THROUGHOUT MOST OF THE DISCUSSION IN COMMENTING ON THE US PAPER. GREY STARTED OFF THE DISCUSSION BY INDICATING WHAT HE CONSIDERED SERIOUS GAPS IN THE PAPER, PRINCIPALLY THE LACK OF COUNTERVAILING DUTIES (CVD) PROVISIONS AND A MEANINGFUL TEST OF INJURY. THE INJURY TEST FOR CVD, GREY ASSERTED, MIGHT BE MORE RIGOROUS THAN THAT FOR AN ANTI-DUMPING ACTION SINCE CVD'S ARE AIMED AT GOVERNMENTAL POLICIES AS OPPOSED TO PRICING PRACTICES OF A PRIVATE COMPANY. RIVERS COUNTERED BY OBSERVING THAT THE SOURCE OF INJURY, WHETHER STEMMING FROM A GOVERNMENTAL POLICY OR A FIRM'S LIMITED OFFICIAL USE

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PRICING PRACTICE, WAS IRRELEVANT TO THE FACT THAT INJURY HAD OCCURRED. TO PROMOTE A CONCRETE DISCUSSION ON INJURY CRITERIA, KLEIN CIRCULATED A PERSONAL DRAFT OF POSSIBLE ELEMENTS FOR FUTURE CONSIDERATION (HAND CARRIED TO WASHINGTON BY GREENWALD). THROUGHOUT THE DISCUSSION, THE CANADIANS AND THE EC UNDERScored THEIR CONCERN FOR THE US TO FULLY IMPLEMENT IN US LAW ANY AGREED INJURY CRITERIA AND SOUGHT ASSURANCE THAT THERE WOULD BE NO REPETITION OF THEIR UNFAVORABLE EXPERIENCE IN THE KENNEDY ROUND NEGOTIATION OF THE ANTI-DUMPING CODE WHERE, IN THEIR VIEW, THE US HAS NOT YET FULLY ADHERED TO THE AGREEMENT.

4. DOMESTIC SUBSIDIES: ON DOMESTIC SUBSIDIES, GREY BELIEVED THAT A QUANTITATIVE APPROACH TO GUIDELINES MIGHT BE TOO AMBITIOUS. KLEIN POINTED TO PRACTICAL DIFFICULTIES OF EMPLOYING NORMATIVE GUIDELINES, ASSUMING THEY EVEN COULD BE AGREED UPON. THE PERVASIVE USE OF DOMESTIC SUBSIDIES TO ACHIEVE ECONOMIC GROWTH AND TO SUPPORT IMPORTANT ECONOMIC SECTORS (E.G. ENERGY AND TRANSPORTATION) WOULD MAKE ANY PEJORATIVE REFERENCE TO SUCH SUBSIDIES UNACCEPTABLE FOR THE EC. (IN PRIVATE

CONVERSATION KLEIN REVEALED THAT MEMBER STATES
HAD NOT REACTED AS STRONGLY AS HE EXPECTED AGAINST
THE REFERENCE TO DOMESTIC SUBSIDIES IN THE US PAPER.)
US RESPONDED THAT QUANTITATIVE GUIDELINES WERE PREFER-
ABLE, WHEREVER POSSIBLE, AND STRESSED THE CRITICAL
IMPORTANCE OF AGREEMENT ON GUIDELINES ON DOMESTIC
SUBSIDIES FOR ANY ACCEPTABLE SUBSIDY AGREEMENT. IN
CONTRAST TO HIS OPENING STATEMENT GREY RAISED THE
CANADIAN IDEA OF ESTABLISHING CEILINGS ON CERTAIN
SUBSIDY PRACTICES TO PROVIDE A MEASURE OF CERTAINTY
(E.G. SUBSIDIES WITHIN THE CEILING WOULD NOT BE
SUBJECT TO CVD), BUT KLEIN THOUGHT THE IDEA WOULD
NOT BE HELPFUL. US AGREED, AT CANADIAN, EC AND
JAPANESE URGING, TO PROVIDE A LIST OF FACTORS
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ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15
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INFO ALL EC CAPITALS

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CONSIDERED BY USG IN CVD CASES INVOLVING DOMESTIC SUBSIDIES TO ASSIST IN ESTABLISHING THE PARAMETERS OF THE DISCUSSION. THE NORDICS JOINED WITH THE EC IN EMPHASIZING THAT THE FOCUS OF THE RULES SHOULD BE ON THE TRADE EFFECTS OF SUBSIDIES, WITH KLEIN ASSERTING THAT ACTION UNDER GATT ARTICLE XVI WOULD REQUIRE "SERIOUS PREJUDICE" (UNDEFINED) TO BE SHOWN. IN FURTHER DISCUSSION OF ART. XVI/XXIII REMEDIES, EC DREW A DISTINCTION BETWEEN NULLIFICATION AND IMPAIRMENT OF BENEFITS VERSUS IMPEDING OBJECTIVES OF AN AGREEMENT. KLEIN STATED THAT STRICT OBLIGATIONS LIMITED OFFICIAL USE

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ON DOMESTIC SUBSIDIES WHEREBY ANY NEW SUBSIDIES OR INCREASE IN OLD SUBSIDIES WOULD BE CONSIDERED AS AUTOMATICALLY NULLIFYING OR IMPAIRING THE BENEFITS OF THE AGREEMENT IS "NOT ON". USE OF SUCH SUBSIDIES, HOWEVER, COULD HAVE A BEARING ON THE OBJECTIVES OF THE AGREEMENT, E.G. NOT TO CAUSE INJURY BY THE USE OF DOMESTIC SUBSIDIES. US RESPONDED THAT IF A VALUE OF A TARIFF BINDING WERE UNDERCUT, THEN THE VALUE OF THE AGREEMENT WOULD BE DIMINISHED, AND SHARED VIEW THAT PROCEDURES SHOULD BE DESIGNED TO PRESERVE THE OBJECTIVES OF THE AGREEMENT.

5. RAW MATERIALS: GREY SUGGESTED THAT THE GROUP EXPLORE THE POSSIBILITY OF ESTABLISHING DIFFERENT RULES ON SUBSIDIZATION FOR THE DEVELOPMENT OF SUPPLIES OF RAW MATERIALS FROM RULES FOR MANUFACTURING SUBSIDIES. SUBSIDIZATION OF SUCH DEVELOPMENT, WHICH MANY COUNTRIES DO THROUGH THEIR TAX LAWS, WILL HAVE A LONG TERM IMPACT ON SUPPLIES AND IS RELATED TO THE ISSUE OF ACCESS OF SUPPLIES WHICH HAS BEEN RAISED IN THE MTN. EC DOUBTED WHETHER SPECIAL PROVISIONS WOULD BE NEEDED IF AN ADEQUATE INJURY TEST WERE ADOPTED. THE US EXPRESSED WILLINGNESS TO EXPLORE THE IDEA FURTHER.

6. REGIONAL AIDS: THE IDEAS ON REGIONAL AIDS CONTAINED IN THE US PAPER WERE CHARACTERIZED BY GREY AS AN "INTERESTING INTELLECTUAL" APPROACH, BUT HE WAS SKEPTICAL ABOUT THEIR PRACTICAL WORKABILITY, POINTING TO EXTENSIVE (AND SPECULATIVE) ECONOMIC ANALYSIS REQUIRED. AN IMPORTANT RELATED TOPIC, ACCORDING TO GREY, IS INTERNATIONAL COMPETITION INVOLVING REGIONAL ASSISTANCE PROGRAMS, E.G. SUBSIDIES AVAILABLE IN NOVA SCOTIA VERSUS THOSE IN THE STATE

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OF ALABAMA, WHICH MUST BE DEALT WITH IN THE SUBSIDIES AGREEMENT. GREY ALSO DREW ATTENTION TO THE SITUATION WHEN TRANSNATIONAL CORPORATIONS TAILOR COMPLAINTS TO AVOID HITTING THEIR SUBSIDIARIES LOCATED ABROAD. A POSSIBLE WAY AROUND THIS PROBLEM WOULD BE TO INCLUDE LANGUAGE TO THE EFFECT THAT GOVERNMENTS SHOULD AVOID TAKING ACTION AGAINST THE KINDS OF SUBSIDIES IT GRANTS ITSELF TO INDUSTRIES.

7. AGRICULTURAL SUBSIDIES: US BRIEFLY REVIEWED ITS IDEAS ON AGRICULTURAL SUBSIDY RULES INCLUDING POSSIBLE ADOPTION OF A "NATIONAL" MARKET SHARE CONCEPT IN GATT ART. XVI:3 AND LINKING AN INJURY TEST TO INTERFERENCE IN DOMESTIC AGRICULTURAL PROGRAMS. US NOTED THAT INFORMAL DISCUSSIONS REGARDING AGRICULTURE WERE STILL IN PROCESS. OTHER DELS WERE NOT PREPARED TO EXCHANGE VIEWS ON THE U.S. IDEAS.

8. EMERGENCY MEASURES: GREY RECOGNIZED THAT A HIGHLY VISIBLE INFLUX OF SUBSIDIZED IMPORTS COULD CAUSE POLITICAL DIFFICULTIES REQUIRING QUICK ATTENTION. EMERGENCY PROVISIONS (E.G. PROVISIONAL DUTIES) FOR DEALING WITH THE PROBLEM COULD BE EMPLOYED APART FROM THE NORMAL PROCESS OF BILATERAL CONSULTATIONS AND INTERNATIONAL PROCEDURES. KLEIN POINTED TO EMERGENCY PROVISIONS CONTAINED IN THE EC PAPER ON PROCEDURES WHEN ACTION IS TAKEN UNDER ART. VI.

9. DUAL PRICING: GREY SAID THAT CANADA WOULD RESERVE ITS POSITION ON WHETHER THE DUAL PRICING CRITERION SHOULD BE ELIMINATED, BUT NOTED THAT MEANINGFUL INJURY TESTS COULD RENDER THAT CRITERION UNNECESSARY. KLEIN, IN SLIGHT BACKTRACKING FROM HIS POSITION IN PREVIOUS CONVERSATIONS, SHARED GREY'S VIEW, BUT SUGGESTED THAT CRITERIA COULD BE ESTABLISHED FOR CASES WHERE THE USE OF DUAL PRICING CRITERIA WAS NOT POSSIBLE (E.G. A FIRM EXPORTING ALL OF ITS SUB-
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SIDIZED PRODUCTION AT UNIFORM PRICES). KLEIN RAISED THE NOTION THAT SUBSIDIES GIVEN UNDER AN ADJUSTMENT ASSISTANCE PROGRAM TO INCREASE A FIRM'S COMPETITIVENESS AND AVOID ESTABLISHMENT OF IMPORT

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P 101849Z APR 78
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RESTRICTIONS SHOULD NOT BE ACTIONABLE UNLESS DUAL
PRICING WAS IN EVIDENCE. RIVERS OBSERVED THAT DUAL
PRICING SITUATIONS COULD BEST BE HANDLED WITHIN
A DUMPING CONTEXT. FURTHERMORE, SUBSIDIES
MAY NOT NECESSARILY HAVE A DIRECT AND IMMEDIATE
EFFECT ON PRICING BUT COULD BE USED TO INCREASE
A FIRM'S COMPETITIVENESS IN OTHER WAYS.

10. EXPORT SUBSIDIES: GREY SUGGESTED THAT THE
DEVELOPMENT OF AN ILLUSTRATIVE LIST OF EXPORT SUB-
SIDIES COULD PROCEED AS A SEPARATE EXERCISE FROM THE
ELABORATION OF GENERAL SUBSIDY RULES. HE PROFESSED
INTEREST IN THE US TEXT REGARDING DIRECT TAX
PRACTICES ENCOURAGING ENTERPRISE PRICING PRACTICES
THAT DO NOT CONFORM TO STRICT ARMS LENGTH PRICING
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POLICIES, BUT REMARKED THAT REFINEMENT OF THAT

CONCEPT SHOULD BE TACKLED BY TAX EXPERTS. THE DEVELOPMENT OF THE LIST, IN KLEIN'S VIEW, SHOULD BE APPROACHED SUBSEQUENT TO THE ESTABLISHMENT OF PROCEDURES SO THAT THE CONSEQUENCES OF USING MEASURES CONTAINED ON THE LIST ARE KNOWN BEFORE THE LIST IS DRAWN-UP. GREY PUT OFF KLEIN, STATING IN FRANK TERMS THAT WORK HAS TO BEGIN AT SOME POINT IN THE CIRCLE OF SUBSIDY RULES/COUNTER MEASURE PROCEDURES AND WAS SUPPORTED BY JAPAN (UKAWA) IN SUGGESTING THAT WORK BE BASED ON THE AGREED 1960 GATT EXPERTS LIST RATHER THAN THE US VERSION. RIVERS SAID THAT THE US TEXT COULD BE REGARDED AS OUR COMMENTS ON THE 1960 LIST TO BE CONSIDERED BY THE GROUP. IN RESPONSE TO QUESTIONS BY UKAWA AND GREY US EXPLAINED THAT THE USE OF PROHIBITED SUBSIDIES WOULD CREATE A PRESUMPTION THAT SERIOUS PREJUDICE HAD OCCURRED, BUT AGREED WITH THE EC OBSERVATION THAT THIS PRESUMPTION WAS OPEN TO FACTUAL REBUTTAL.

11. PROCEDURES FOR NOTIFICATION, CONSULTATION AND CONFLICT RESOLUTION: THE EC INTRODUCED ITS PAPER ON NOTIFICATION, CONSULTATION AND CONFLICT RESOLUTION (DISTRIBUTED ON THURSDAY MORNING; BEING HAND CARRIED TO WASHINGTON BY GREENWALD) AS CONTAINING PROCEDURES FOR FOCUSING ON THE EFFECTS OF SUBSIDIES. KLEIN REPEATED THE EC'S WELL-KNOWN POSITION THAT SUBSIDIES ARE NOT INTRINSICALLY EVIL. RIVERS POINTED OUT THAT THE INCREASING USE OF SUBSIDIZATION WOULD LEAD TO AN INCREASE IN TRADE FRICTIONS AND THEREFORE, AN EFFECTIVE AND FAIR MECHANISM IS NEEDED TO MANAGE SUCH CONFLICTS. GREY ASSERTED THAT THE BASIC GATT MECHANISM HAS A CREDIBLE RECORD IN DEALING WITH LIMITED OFFICIAL USE

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DISPUTES AND CLAIMED THAT THE KEY FACTOR WAS THE UNWILLINGNESS OF PARTICIPANTS TO ACTUALLY UTILIZE PROCEDURES AVAILABLE.

12. IN SPECIFIC COMMENTS ON THE EC PAPER, THE U.S. AND CANADA CRITICIZED THE IMBALANCE OF ITS PROVISIONS. GREY NOTED THE LACK OF PROVISIONS DEALING WITH IMPORT SUBSTITUTION AND THIRD COUNTRY SUBSIDIES. IN ADDITION, GREY SAID THAT THE GENERAL SUBSIDY RULES SHOULD BE CLEARER BEFORE HE COULD MAKE EXTENSIVE COMMENTS ON THE DISPUTE SETTLEMENT MECHANISM. IN PARTICULAR, HE QUERIED WHETHER THE U.S. STILL HELD ITS POSITION THAT PROHIBITED EXPORT SUBSIDIES ARE PER SE INJURIOUS AND SHOULD BE SUBJECT TO UNILATERAL COUNTERVAILING DUTY DETERMINATIONS WITHOUT AN INJURY TEST. RIVERS RESPONDED THAT USE OF PROHIBITED

SUBSIDIES SHOULD BE REGARDED AS A PRIMA FACIE CASE
OF NULLIFICATION AND IMPAIRMENT OF THE AGREEMENT.
WHILE THERE MIGHT BE AN ELEMENT OF MULTILATERAL
REVIEW, THERE SHOULD ALSO BE UNILATERAL RIGHTS.
THESE TWO ASPECTS COULD BE MESHED TOGETHER AT SOME
STAGE. THIS PROVOKED A LIVELY EXCHANGE ON AN
INDIVIDUAL COUNTRY'S RIGHT TO DETERMINE WHETHER
ANOTHER COUNTRY HAD VIOLATED ITS INTERNATIONAL OBLI-
GATIONS. GREY SUGGESTED THAT DOMESTIC AND INTERNATIONAL
PROCEDURES COULD OPERATE IN PARALLEL WITH POSSIBLE
RETROACTIVE APPLICATION OF COUNTERVAILING DUTIES
IF THE INTERNATIONAL BODY FOUND A VIOLATION OF THE
RULES. THIS WOULD GET AT THE PROBLEM OF A COUNTRY
SUBSIDIZING EXPORTS, CAUSING INJURY IN THE MARKET,
BUT THEN ELIMINATING THE SUBSIDY AND NOT SUBJECT TO
ANY SANCTIONS. KLEIN MENTIONED THE POSSIBILITY
OF PROVISIONAL MEASURES PENDING THE OUTCOME OF THE
INTERNATIONAL DELIBERATIONS, BUT, STRESSED THAT THE
GATT ARTICLE XVI ROUTE SHOULD NOT BE ANY EASIER THAN
THAT UNDER GATT ARTICLE VI. RIVERS PROPOSED THAT
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ELEMENTS OF TIMING, RIGHTS OF SIGNATORIES, AND
RELATIONSHIP OF INTERNATIONAL TO DOMESTIC PROCEDURES
SHOULD BE FURTHER EXPLORED TO FIND AN ACCEPTABLE
SOLUTION.

13. ON OTHER ELEMENTS OF THE PAPER, THE U.S. CONSIDERED
THE NOTIFICATION PROVISIONS WERE IMBALANCED WITH
UNNECESSARILY RIGOROUS REQUIREMENTS FOR SOLICITING
INFORMATION REGARDING SUBSIDY PRACTICES. U.S. WAS
CRITICAL OF THE WEAK PROVISIONS ON RESOLUTION OF
DISPUTES TO WHICH THE EC RESPONDED THAT THE OBJECTIVE
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OF THE PROCESS WAS CONCILIATION OF DIFFERENCES,
RECOGNIZING THE POLITICAL REALITIES OF INTERNATIONAL
TRADE, RATHER THAN A STRICT JURIDICAL PROCESS. PRO-
VISIONS IN THE EC PAPER FOR AN INTERNATIONAL BODY
TO MAKE INJURY DETERMINATIONS IS UNACCEPTABLE TO
THE U.S. BUT, AFTER SOME DISCUSSION, U.S. EXPRESSED
WILLINGNESS TO EXPLORE THE POSSIBILITY OF AN
INTERNATIONAL REVIEW OF SUCH DETERMINATIONS (A RIGHT
WHICH ALREADY EXISTS IN GATT). EXTENSIVE REFERENCES
TO DOMESTIC PROCEDURES IN THE EC DOCUMENT ELICITED
U.S. OBSERVATION THAT AMOUNT OF DETAIL PROPOSED BY
EC IS NOT APPROPRIATE FOR DISCUSSION OF INTERNATIONAL
DISPUTE SETTLEMENT. AMB. GREY SUGGESTED THAT
A SEPARATE PAPER BE PREPARED ON DOMESTIC PROCEDURES.
THIS TOPIC WAS NOT FOLLOWED UP.

14. FUTURE WORK: THE GROUP AGREED WITH THE U.S.
SUGGESTION THAT BOTH THE U.S. AND EC PAPERS BE
REVISED IN LIGHT OF COMMENTS RECEIVED FROM OTHER
DELEGATIONS AND THAT ANOTHER INFORMAL PLURILATERAL
SESSION BE HELD AT THE END OF THE MONTH.

15. DRAFTED BY WALLAR. MCDONALD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, MEETINGS, COUNTERVAILING DUTIES, SUBSIDIES
Control Number: n/a
Copy: SINGLE
Draft Date: 10 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA05375
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780155-0072
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780475/aaaacxi.tel
Line Count: 490
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8a97aab3-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
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Previous Classification: LIMITED OFFICIAL USE
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Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3023644
Secure: OPEN
Status: NATIVE
Subject: MTN: INFORMAL PLURILATERAL MEETING ON - SUBSIDY/COUNTERVAILING DUTIES, APRIL 6-7, 1978
TAGS: ETRD, US, MTN, EEC
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/8a97aab3-c288-dd11-92da-001cc4696bcc
Review Markings:
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